IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

T.R.C.No.217 of 2001

ORDER DATED 18.9.2000 IN T.A.NO.272 OF 1996 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, KOZHIKODE.

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REVISION PETITIONER/APPELLANT/RESPONDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES,
ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER SRI.VINOD CHANDRAN.

RESPONDENT/RESPONDENT/APPELLANT/ASSESSEE:-

KUMAR SONS,
CEMENT DEALER,
KUTHUPARAMBA.

BY ADV. SRI.DALE P.KURIEN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.DATTU, C.J. & K.M.JOSEPH, J.

T.R.C.No.217 of 2001

Dated, this the 20th day of November, 2007

ORDER

H.L.Dattu, C.J.

The State being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kozhikode in T.A.No.272 of 1996 dated 18th September, 2000 has presented this tax revision case before us.

(2) The Revenue has raised the following questions of law for our consideration and decision. They are as under:

> a) Is not the Tribunal in error in interfering with the well considered orders of the lower authorities, without assigning any reasons to displace those orders? Is not the exercise of the second Appellate Jurisdiction by the Tribunal in the instant case perverse and illegal?
>
> b) After confirming the rejection of the accounts of the assessee by the Tribunal, is the Tribunal justified in remitting the addition to the actual amount of suppression detected thereby making the assessment not a best judgment assessment at all?"

(3) The assessee being aggrieved by the orders passed by the assessing authority and the first appellate authority for the assessment year 1993-94, had filed second appeal before the appellate Tribunal in T.A.No.272 of 1996. The Tribunal by its order dated 18th September, 2000 has disposed of the appeal by a cryptic order. Aggrieved by the same, the Revenue is before us.

(4) The Tribunal in its order firstly noticed the contentions of both the parties and thereafter without assigning any reason whatsoever, modified the orders passed by the assessing authority and directed the assessing authority to pass a best judgment assessment by adding only the actual suppression

detected at the time of inspection. The order so passed by the Tribunal is as under:

> "5. The assessing authority rejected the books of accounts for the following reasons:
>
> 'The Intelligence Squad, AIT & ST, Thalassery have inspected their business place on 4-12-93 and recorded the physical stock of certain items of goods found there. Subsequent verification of the account revealed the following defects.
>
> At the time of inspection there was a shortage of 98 bags of cement.
>
> The accounts slips recovered from their business place revealed that he has purchased 500 bags of cement on various dates. The purchase bill was supported only for 200 bags of cement as detailed below:
>
> | Date | Quantity purchased as revealed from the slip | Bill supported |
> |---|---|---|
> | 2-1-1993 | 150 bags | 100 bags |
> | 16-10-93 | 150 bags | 100 bags |
> | 18-10-93 | 200 bags | Nil |
>
> The above defects go to show that they are not maintained true and complete accounts for the year 93-94 which is an offence punishable under Section 46(1) of the KGST Act 1963.
>
> They have admitted the offence and offence was compounded in a sum of Rs.1,500/- at his request.
>
> When I have checked their accounts I am also convinced that they are not maintaining true and complete accounts for the year 93-94.'
>
> 6. The defects pointed out by the assessing authority does not justify an addition of Rs.Lakh. I fix the addition to actual suppression detected. The assessment is revised to the limited extent."

(5) We have carefully perused the orders passed by the Tribunal. As we have noticed earlier, the Tribunal firstly refers to the contentions of both the

parties and thereafter without there being any discussion whatsoever modified the orders of assessment passed. The Tribunal is not only a fact finding authority, but also can decide the question of law. When the assessee had pleaded certain questions of law, the Tribunal was expected to have considered the same and passed appropriate orders. In the instant case, such a thing has not been done by the Tribunal. Therefore, it is difficult for us to sustain the orders passed by the Tribunal.

(6) Accordingly, we pass the following:

Order

i) Tax Revision Case is allowed.

ii) The order passed by the Tribunal in T.A.No.272 of 1996 dated 18th September, 2000 is set aside.

iii) The matter is remanded back to the Tribunal to redo the matter in accordance with law after affording an opportunity of hearing to both the parties. It is needless to say that the Tribunal would pass a considered speaking order.

iv) In view of the order passed in the Tax Revision Case, the relief sought for in I.A.No.2820 of 2007 need not be considered by us for the present. Therefore, the said application is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

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